

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4254 of 1998

to

FIRST APPEALNo 4258 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SARDAR SAROVAR NARMADA NIGAM LTD

Versus

MAHESHKUMAR RAMABHAI DARIYA

Appearance:

MR ANANT S DAVE for Appellant
MR AJ PATEL for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MRS SIDDHI TALATI, AGP for Respondent Nos. 3 & 4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/09/2000

ORAL JUDGEMENT

1. These are a group of First Appeals under section 54 of the Land Acquisition Act read with section 96, CPC, at the instance of Sardar Sarovar Narmada Nigam Ltd., which is the acquiring body, for whose purpose the lands in question were acquired.

2. The lands in question are situated in the village of Juni Dhari, Taluka Godhra, District Panchmahals and were acquired for the purpose of Narmada Main Canal by notification under section 4 of the Land Acquisition Act dated 25th May 1989. The claimants had preferred their claims before the Land Acquisition Officer valuing the land at Rs.20/- per square meter, as against which the Land Acquisition Officer had made an offer under his award under section 11 of the said at at the rate of Rs.2.70ps per square meter.

3. Being aggrieved by the said award, the land-holders preferred individual references under section 18 of the said Act to the District Court. After appreciating the evidence on record the District Court valued the land at Rs.17.70ps per square meter.

4. It is this award of the District Court under section 18 of the said Act which is the subject matter of the present group of appeals.

5. I have heard the learned counsel for the respective parties and perused such documentary and oral evidence on record to which my attention has been drawn. The evidentiary material is not large. It consists mainly of two documents and one award of District Court under section 18 of the Land Acquisition Act together with the valuation report of an expert witness.

6. Maheshkumar Ramabhai Dharia has deposed at Exh.15 and has proved the agreement of sale at Exh.16. This is an agreement to sell in respect of land situated in the same village, and is a registered document dated 2nd January 1989, which is prior to the notification under section 4 which was dated 25th May 1989. The sale consideration contemplated by Exh.16 was Rs.50000/-, which works out at the rate of Rs.14.97ps per square meter. It is in evidence and also common ground on both sides that this agreement of sale could not be implemented and could not result in a sale deed inasmuch as the land which was the subject matter of the agreement was itself acquired for the present project, and being covered by the very notification under section 4 in the present case.

7. Similarly, Kalubhai Dhulabhai has deposed at Exh.17 and has proved the document at Exh.18. This document is also an agreement of sale, is a registered document, and pertains to the proposed sale of land situated in the very same village. This agreement is dated 2nd January 1989, which again precedes the date of section 4 notification which was 25th May 1989. The sale consideration contemplated in this agreement is Rs.45000/- which works out at Rs.15.88ps per square meter. It is also common ground on both sides that this agreement could not be implemented and did not result in a sale deed inasmuch as the land contemplated by the agreement was itself acquired under the very same notification under section 4 viz. acquired for this very project.

8. There is also the deposition of Omprakash Dahyabhai as an expert valuer in agricultural land, who has proved his valuation report at Exh.23 valuing the acquired lands at Rs.38.75ps per square meter. However, the Reference Court has not placed much reliance upon this report, apparently on the basis that the same was sponsored by the land owners and therefore there is a possibility that the report may be biased in favour of the land-holders.

9. Furthermore, the claimants also relied upon Exh.48 which is an award of the District Court under section 18 of the said Act in respect of the lands acquired from village Rameshra, which was acquired for the very same project viz. Narmada Project Unit II. It is pertinent to note that the notification under section 4 of the said Act relevant to the acquisition of lands in the village Rameshra was dated 11th January 1985 i.e. more than four years prior to the present notification. By the said judgement and award at Exh.48, the market value of the lands acquired in village Rameshra was determined at Rs.11.30 ps per square meter.

10. Learned counsel for the respondent further states that he has made personal inquiries on the basis of which he states that the decision in the aforesaid group of land reference cases viz. Exh.48 where LAR No.126/89 was the main Reference, was challenged before the High Court in First Appeal Nos.1709/94 to 1724/94 which were dismissed, and that even the subsequent SLP Nos.28227/95 to 28242/95 were dismissed by the Supreme Court.

11. Learned counsel for the appellant is unable to substantiate his contention that the award rendered by the District Court is excessive, on the basis of any

particular evidentiary material on record.

12. It is well settled law that an agreement of sale, particularly when it is a registered document, and particularly when registration of agreement of sale was not mandatory, and is proved to be an agreement between a willing vendor and a willing purchaser without any compulsion and after due inquiry into the market rates by the parties concerned, can be referred to as a relevant sale instance when it is shown that the sale could not be effected on account of the factors beyond the control of both the parties. On the facts of the case it is not disputed that these sales contemplated by Exhs.16 and 18 could not be brought about since the lands which were the subject matter of the agreements were themselves acquired under the notification in question. Furthermore, it is established by oral evidence on record that the market value of the land situated in village Rameshra and that the land situated in the instant village Juni Dhari are at par with each other in terms of fertility, productivity and yield, etc. There is no evidence on record to indicate that there are any other factors which would militate against a valid and reasonable comparison being made between the market value of the lands situated in village Rameshra and the present lands. Obviously, therefore, Exh.48 would also be a comparable instance.

13. Only one point requires to be considered.

13.1 Exh.16 as also Exh.18 determine the market value at about Rs.15/- per square meter, as against which the Reference Court has awarded additional compensation at the rate of Rs.15/- per square meter, making an aggregate market value of Rs.17.70 ps per square meter. There does not appear to be any justification for computing the market value on this basis.

14. Going by the valuation determined by Exh.48, the market value under Exh.48 is Rs.11.30 ps per square meter. However, an increment of an average of 10 per cent per annum is added for the period between the two notifications in question (four years), the increment would be Rs.4.52 ps. That would bring the market value of the acquired lands to Rs.15.82 ps (Rs.11.30 + Rs.4.52). This figure can be rounded off to Rs.16/- per square meter which in my opinion would be the aggregate amount of compensation payable to the claimants in respect of the land value. To that extent, therefore, the award of the District Court requires modification.

15. In the premises aforesaid, it is held and

directed that the claimants-land holders would be entitled to compensation on account of the market value of the acquired lands at Rs.16/- per square meter, together with solatium at the rate of 30% thereon. They shall be further entitled to interest at the rate of 9% per annum for the first year and at the rate of 15% per annum for the subsequent years from the date of taking possession till the amount is paid or deposited. The claimant shall also be entitled to a further amount of 12% of the market value. These appeals are, therefore, partly allowed to the aforesaid extent with no order as to costs. Decree accordingly.

17. The appellants are directed to deposit the requisite amount due and payable to the original claimants under the present judgement and decree latest by 30th December 2000 before the Reference Court.
